IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.2916 of 2006
Date of Decision : 06.11.2007

Man Singh .....Appellant

versus

Ram Niwas .....Respondent

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.Gorakh Nath, Advocate for the appellant.

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JUDGMENT

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved from the judgment and decree passed by the Courts below whereby suit for specific performance of the agreement dated 10.9.1997 was decreed.

On the aforesaid date, the appellant entered into an agreement for sale of the land measuring 8 kanals for total consideration of Rs.1,20,000/-. The defendant received Rs.40,000/- at the time of agreement as earnest money and the sale deed was agreed to be executed on 10.9.1997. Subsequently, on receipt of Rs.60,000/-, sale deed was agreed to be executed on 30.5.1998. Since the sale deed was not executed on the agreed date, the plaintiff filed the present suit for specific performance on 14.9.1998 which has been decreed by the Courts below.

Though the defendant denied the execution of the agreement in the written statement, but when appearing as witness admitted the execution of the agreement Exhibit PW-1/A and supplementary agreement Exhibit PW-2/A and payment of Rs.1,00,000/- in terms of the aforesaid agreements

is deemed to be proved. The Court found that since the signatures on the agreements are admitted, therefore, the appellant admits the contents of those documents. The case of the appellant that the signatures have been obtained by fraud and misrepresentation, remains unsubstantiated as no evidence has been led in respect of such plea.

Learned counsel for the appellant has raised two fold arguments in the present second appeal. Firstly, it is argued that the property in the hands of the appellant is a Joint Hindu Family property and, therefore, specific performance of the agreement could not be granted in respect of such property.

Since the agreement has been executed by the defendant, the plea that he was not competent to execute the agreement is not available to him. Once the execution of the agreement is proved, the plaintiff is entitled to specific performance of the same. However, whether any such sale is without legal necessity, is a question which can be raised by other coparcener after completion of the sale only.

The other argument that the plaintiff has sought alternative relief of recovery of the amount paid and, therefore, the plaintiff is not entitled to specific performance, again is not tenable. The relief of specific performance of an agreement can be declined on a plea of hardship pleaded and proved in terms of Section 20 of the Specific Relief Act, 1963. In the absence of any such plea and proof, the plaintiff has been rightly granted a decree for specific performance of the agreement.

The findings of fact recorded by the Courts below are sought to be disputed by re-appreciation of evidence in second appeal. It could not be pointed out that any evidence has been misread or not taken into

consideration. Therefore, the findings recorded by the Courts below cannot be permitted to be disputed in second appeal. Thus, I do not find any illegality or irregularity in the finding recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal.

The present appeal is dismissed.

06-11-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**